

SUBCHAPTER H—RULES, REGULATIONS, STATEMENTS AND INTERPRETATIONS UNDER THE HART-SCOTT-RODINO ANTI-TRUST IMPROVEMENTS ACT OF 1976

PART 801—COVERAGE RULES

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AUTHORITY: 15 U.S.C. 18a(d).

SOURCE: 43 FR 33537, July 31, 1978, unless otherwise noted.

§ 801.1 Definitions.

When used in the act and these rules—

(a)(1) *Person*. Except as provided in paragraphs (a) and (b) of §801.12, the term *person* means an ultimate parent entity and all entities which it controls directly or indirectly.

Examples: 1. In the case of corporations, “person” encompasses the entire corporate structure, including all parent corporations, subsidiaries and divisions (whether consolidated or unconsolidated, and whether incorporated or unincorporated), and all related

corporations under common control with any of the foregoing.

2. Corporations A and B are each directly controlled by the same foreign state. They are not included within the same “person,” although the corporations are under common control, because the foreign state which controls them is not an “entity” (see §801.1(a)(2)). Corporations A and B* are the ultimate parent entities within persons “A”, and “B” which include any entities each may control.

3. Since a natural person is an entity (see §801.1(a)(2)), a natural person and a corporation which he or she controls are part of the same “person.” If that natural person controls two otherwise separate corporations, both corporations and the natural person are all part of the same “person.”

4. See the example to §801.2(a).

(2) *Entity*. The term *entity* means any natural person, corporation, company, partnership, joint venture, association, joint-stock company, trust, estate of a deceased natural person, foundation, fund, institution, society, union, or club, whether incorporated or not, wherever located and of whatever citizenship, or any receiver, trustee in bankruptcy or similar official or any liquidating agent for any of the foregoing, in his or her capacity as such; or any joint venture or other corporation which has not been formed but the acquisition of the voting securities or other interest in which, if already formed, would require notification under the act and these rules:

Provided, however, that the term entity shall not include any foreign state, foreign government, or agency thereof (other than a corporation or unincorporated entity engaged in commerce), nor the United States, any of the States thereof, or any political subdivision or agency of either (other than a corporation or unincorporated entity engaged in commerce).

(3) *Ultimate parent entity*. The term *ultimate parent entity* means an entity

*Throughout the examples to the rules, persons are designated (“A”, “B,” etc.) with quotation marks, and entities are designated (A, B, etc.) without quotation marks.

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which is not controlled by any other entity.

Examples: 1. If corporation A holds 100 percent of the stock of subsidiary B, and B holds 75 percent of the stock of its subsidiary C, corporation A is the ultimate parent entity, since it controls subsidiary B directly and subsidiary C indirectly, and since it is the entity within the person which is not controlled by any other entity.

2. If corporation A is controlled by natural person D, natural person D is the ultimate parent entity.

3. P and Q are the ultimate parent entities within persons “P” and “Q.” If P and Q each own 50 percent of the voting securities of R, then P and Q are both ultimate parents of R, and R is part of both persons “P” and “Q.”

(b) *Control.* The term *control* (as used in the terms *control(s)*, *controlling*, *controlled by* and *under common control with*) means:

(1) *Either.* (i) Holding 50 percent or more of the outstanding voting securities of an issuer or

(ii) In the case of an unincorporated entity, having the right to 50 percent or more of the profits of the entity, or having the right in the event of dissolution to 50 percent or more of the assets of the entity; or

(2) Having the contractual power presently to designate 50 percent or more of the directors of a for-profit or not-for-profit corporation, or in the case of trusts that are irrevocable and/or in which the settlor does not retain a reversionary interest, the trustees of such a trust.

Examples: 1. Corporation A holds 100 percent of the stock of corporation B, 75 percent of the stock of corporation C, 50 percent of the stock of corporation D, and 30 percent of the stock of corporation E. Corporation A controls corporations B, C and D, but not corporation E. Corporation A is the ultimate parent entity of a person comprised of corporations A, B, C and D, and each of these corporations (but not corporation E) is “included within the person.”

2. A statutory limited partnership agreement provides as follows: The general partner “A” is entitled to 50 percent of the partnership profits, “B” is entitled to 40 percent of the profits and “C” is entitled to 10 percent of the profits. Upon dissolution, “B” is entitled to 75 percent of the partnership assets and “C” is entitled to 25 percent of those assets. All limited and general partners are entitled to vote on the following matters: the dissolution of the partnership, the transfer of assets not in the ordinary

course of business, any change in the nature of the business, and the removal of the general partner. The interest of each partner is evidenced by an ownership certificate that is transferable under the terms of the partnership agreement and is subject to the Securities Act of 1933. For purposes of these rules, control of this partnership is determined by paragraph (1)(ii) of this section. Although partnership interests may be securities and have some voting rights attached to them, they do not entitle the owner of that interest to vote for a corporate “director” as required by § 801.1(f)(1). Thus control of a partnership is not determined on the basis of either paragraph (1)(i) or (2) of this section. Consequently, “A” is deemed to control the partnership because of its right to 50 percent of the partnership’s profits. “B” is also deemed to control the partnership because it is entitled to 75 percent of the partnership’s assets upon dissolution.

3. “A” is a nonprofit charitable foundation that has formed a partnership joint venture with “B,” a nonprofit university, to establish C, a nonprofit hospital corporation that does not issue voting securities. Pursuant to its charter “A” and “B” are each entitled to appoint three of C’s six directors. “A” and “B” would each be deemed to control C, pursuant to § 801.1(b)(2) because each is deemed to have the contractual power presently to designate 50 percent or more of the directors of a not-for-profit corporation.

4. “A” is entitled to 50 percent of the profits of partnership B and 50 percent of the profits of partnership C. B and C form a partnership E with “D” in which each entity has a right to one-third of the profits. When E acquires company X, “A” must report the transaction (assuming it is otherwise reportable). Pursuant to § 801.1(b)(1)(ii), E is deemed to be controlled by “A,” even though “A” ultimately will receive only one-third of the profits of E. Because B and C are considered as part of “A,” the rules attribute all profits to which B and C are entitled (two-thirds of the profits of E in this example) to “A.”

5. A is the settlor of an irrevocable trust in which it does not retain a reversionary interest in the corpus of the trust. A is entitled under the trust indenture to designate four of the eight trustees of the trust. A controls the trust pursuant to § 801.1(b)(2) and is deemed to hold the assets that constitute the corpus of the trust. Note that the right to designate 50 percent or more of the trustees of a business trust that has equity holders entitled to profits or assets upon dissolution of the business trust does not constitute control. Such business trusts are treated as unincorporated entities and control is determined pursuant to § 801.1(b)(1)(ii).

(c) *Hold.* (1) Subject to the provisions of paragraphs (c) (2) through (8) of this

section, the term *hold* (as used in the terms *hold(s)*, *holding*, *holder* and *held*) means beneficial ownership, whether direct, or indirect through fiduciaries, agents, controlled entities or other means.

Example: If a stockbroker has stock in “street name” for the account of a natural person, only the natural person (who has beneficial ownership) and not the stockbroker (which may have record title) “holds” that stock.

(2) The holdings of spouses and their minor children shall be holdings of each of them.

(3) Except for a common trust fund or collective investment fund within the meaning of 12 CFR 9.18(a) (both of which are hereafter referred to in this paragraph as “collective investment funds”), and any revocable trust or an irrevocable trust in which the settlor retains a reversionary interest in the corpus, a trust, including a pension trust, shall hold all assets and voting securities constituting the corpus of the trust.

Example: Under this paragraph the trust—and not the trustee—“holds” the voting securities and assets constituting the corpus of any irrevocable trust (in which the settlor retains no reversionary interest, and which is not a collective investment fund). Therefore, the trustee need not aggregate its holdings of any other assets or voting securities with the holdings of the trust for purposes of determining whether the requirements of the act apply to an acquisition by the trust. Similarly, the trustee, if making an acquisition for its own account, need not aggregate its holdings with those of any trusts for which it serves as trustee. (However, the trustee must aggregate any collective investment funds which it administers; see paragraph (c)(6) of this section.)

(4) The assets and voting securities constituting the corpus of a revocable trust or the corpus of an irrevocable trust in which the settlor(s) retain(s) a reversionary interest in the corpus shall be holdings of the settlor(s) of such trust.

(5) Except as provided in paragraph (c)(4) of this section, beneficiaries of a trust, including a pension trust or a collective investment fund, shall not hold any assets or voting securities constituting the corpus of such trust.

(6) A bank or trust company which administers one or more collective in-

vestment funds shall hold all assets and voting securities constituting the corpus of each such fund.

Example: Suppose A, a bank or trust company, administers collective investment funds W, X, Y and Z. Whenever person “A” is to make an acquisition, whether of not on behalf of one or more of the funds, it must aggregate the holdings of W, X, Y and Z in determining whether the requirements of the act apply to the acquisition.

(7) An insurance company shall hold all assets and voting securities held for the benefit of any general account of, or any separate account administered by, such company.

(8) A person holds all assets and voting securities held by the entities included within it; in addition to its own holding, an entity holds all assets and voting securities held by the entities which it controls directly or indirectly.

(d)(1) *Affiliate.* An entity is an affiliate of a person if it is controlled, directly or indirectly, by the ultimate parent entity of such person.

(2) *Associate.* For purposes of Items 6 and 7 of the Form, an associate of an acquiring person shall be an entity that is not an affiliate of such person but:

(A) Has the right, directly or indirectly, to manage the operations or investment decisions of an acquiring entity (a “managing entity”); or

(B) Has its operations or investment decisions, directly or indirectly, managed by the acquiring person; or

(C) Directly or indirectly controls, is controlled by, or is under common control with a managing entity; or

(D) Directly or indirectly manages, is managed by, or is under common operational or investment decision management with a managing entity.

Examples: 1. ABC Investment Group has organized a number of investment partnerships. Each of the partnerships is its own ultimate parent, but ABC makes the investment decisions for all of the partnerships. One of the partnerships intends to make a reportable acquisition. For purposes of Items 6(c) and 7, each of the other investment partnerships, and ABC Investment Group itself are associates of the partnership that is the acquiring person. In response to Item 6(c)(1), the acquiring person will disclose any of its 5 percent or greater minority holdings that generate revenues in any of the same NAICS

codes as the acquired entity(s) in the reportable transaction. In Item 6(c)(ii) it would report any 5 percent or greater minority holdings of its associates in the acquired entity(s) and in any entities that generate revenues in any of the same NAICS codes as the acquired entity(s). In Item 7, the acquiring person will indicate whether there are any NAICS code overlaps between the acquired entity(s) in the reportable transaction, on the one hand, and the acquiring person and all of its associates, on the other.

2. XYZ Corporation is its own ultimate parent and intends to make a reportable acquisition. Pursuant to a management contract, Fund MNO has the right to manage the investments of XYZ Corporation. For the HSR filing by XYZ Corporation, Fund MNO is an associate of XYZ, as is any other entity that either controls, or is controlled by, or manages or is managed by Fund MNO or is under common control or common investment management with Fund MNO.

3. EFG Investment Group has the contractual power to determine the investments of PRS Corporation, which is its own ultimate parent. Natural person Mr. X, who is not an employee of EFG Investment Group, has been contracted by EFG Investment Group as its investment manager. When PRS Corporation makes an acquisition, its associates include (i) EFG Investment Group, (ii) any entity over which EFG Investment Group has investment authority, (iii) any entity that controls, or is controlled by, EFG Investment Group, (iv) Natural person Mr. X, (v) any entity over which Natural person Mr. X has investment management authority, and (vi) any entity which is controlled by Natural person Mr. X, directly or indirectly.

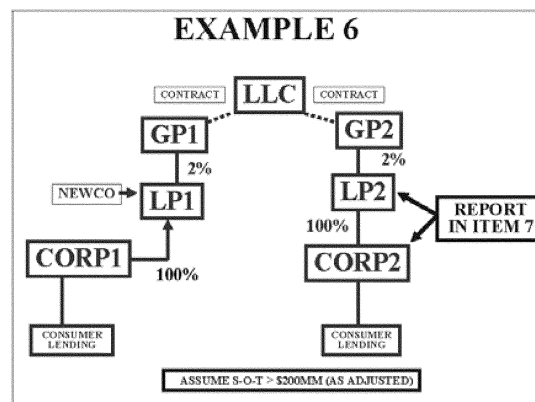
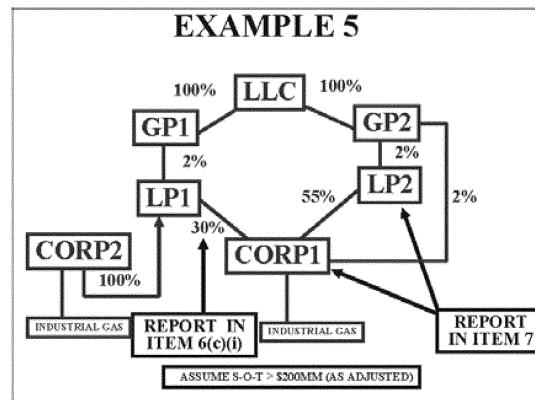
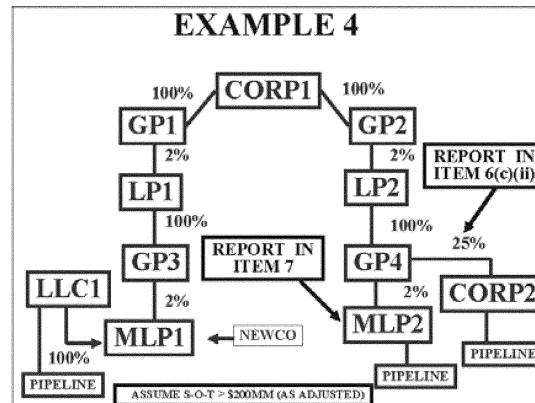
4. CORP1 controls GP1 and GP2, the sole general partners of private equity funds LP1 and LP2 respectively. LP1 controls GP3, the sole general partner of MLP1, a newly formed master limited partnership which is its own ultimate parent entity. LP2 controls GP4, the sole general partner of MLP2, another master limited partnership that is its own ultimate parent entity and which owns and operates a natural gas pipeline. In addition, GP4 holds 25 percent of the voting securities of CORP2, which also owns and operates a natural gas pipeline.

MLP1 is acquiring 100 percent of the membership interests of LLC1, also the owner and operator of a natural gas pipeline. MLP2, CORP2 and LLC1 all derive revenues in the same NAICS code (Pipeline Transportation of Natural Gas). All of the entities under common investment management of CORP1, including GP4 and MLP2, are associates of MLP1, the acquiring person.

In Item 7 of its HSR filing, MLP1 would identify MLP2 as an associate that has an overlap in pipeline transportation of natural gas with LLC1, the acquired person. Because GP4 does not control CORP2 it would not be listed in Item 7, however, GP4 would be listed in Item 6(c)(ii) as an associate that holds 25 percent of the voting securities of CORP2. In this example, even though there is no direct overlap between the acquiring person (MLP1) and the acquired person (LLC1), there is an overlap reported for an associate (MLP2) of the acquiring person in Item 7. 5. LLC is the investment manager for and ultimate parent entity of general partnerships GP1 and GP2. GP1 is the general partner of LP1, a limited partnership that holds 30 percent of the voting securities of CORP1. GP2 is the general partner of LP2, which holds 55 percent of the voting securities of CORP1. GP2 also directly holds 2 percent of the voting securities of CORP1. LP1 is acquiring 100 percent of the voting securities of CORP2. CORP1 and CORP2 both derive revenues in the same NAICS code (Industrial Gas Manufacturing).

All of the entities under common investment management of the managing entity LLC, including GP1, GP2, LP2 and CORP1 are associates of LP1. In Item 6(c)(i) of its HSR filing, LP1 would report its own holding of 30 percent of the voting securities of CORP1. It would not report the 55 percent holding of LP2 in Item 6(c)(ii) because it is greater than 50 percent. It also would not report GP2's 2 percent holding because it is less than 5 percent. In Item 7, LP1 would identify both LP2 and CORP1 as associates that derive revenues in the same NAICS code as CORP2.

6. LLC is the investment manager for GP1 and GP2 which are the general partners of limited partnerships LP1 and LP2, respectively. LLC holds no equity interests in either general partnership but manages their investments and the investments of the limited partnerships by contract. LP1 is newly formed and its own ultimate parent entity. It plans to acquire 100 percent of the voting securities of CORP1, which derives revenues in the NAICS code for Consumer Lending. LP2 controls CORP2, which derives revenues in the same NAICS code. All of the entities under the common management of LLC, including LP2 and CORP2, are associates of LP1. For purposes of Item 7, LP1 would report LP2 and CORP2 as associates that derive revenues in the NAICS code that overlaps with CORP1. Even though the investment manager (LLC) holds no equity interest in GP1 or GP2, the contractual arrangement with them makes them associates of LP1 through common management.



7. Corporation A is its own ultimate parent entity and is making an acquisition of Corporation B. Although Corporation A is operationally managed by its officers and its in-

vestments, including the acquisition of Corporation B, are managed by its directors, neither the officers nor directors are considered associates of A.

8. Limited partnership A is an investment partnership that is making an acquisition. LLC B has no equity interest in A, but has a contract to manage its investments for a fee. LLC B has an investment committee comprised of twelve of its employees that makes the actual investment decisions. LLC B is an associate of A but none of the twelve employees are associates of A, as LLC B is a managing entity and the twelve individuals are merely its employees. Contrast this with example 3 where a managing entity, EFG, is itself managed by another entity, Mr. X, who is thus an associate.

9. GP is the general partner of FUND. GP has contracted with LLC to act as an investment advisor with respect to FUND's investments. In this role, LLC acts as a consultant who makes recommendations to GP on what portfolio companies FUND should invest in. The recommendations are non-binding and GP is the only entity that has the authority to exercise investment discretion over FUND's acquisitions of interests in portfolio companies. In this example, GP is an associate of FUND, while LLC is not.

10. GP A is the general partner and investment manager of FUND A1. Mr. X is a principal in the A family of private equity funds and has the contractual right to veto certain proposed actions of GP A and FUND A1, for example, divestitures of stock that would result in a change of control in a portfolio company. His contractual right to veto certain proposed actions does not constitute managing operations. Mr. X does not have the authority under the contract to veto proposed investments of FUND A1 directed by GP A or to direct GP A to authorize investments by FUND A1. In this example, GP A is an associate of FUND A1, while Mr. X is not.

11. LLC is the general partner of LP and has entered into a management contract to exercise investment discretion over LP's investments in portfolio companies as well as to provide certain other administrative services for LP. Mr. Y is the managing member of LLC and as such is the person who actually makes the investment decisions on behalf of LLC. Mr. Y has no management contract with either LLC or LP. In this example, LLC is an associate of LP, while Mr. Y is not. Compare with Example 7 where officers and directors of a corporation are not associates of the corporation.

12. GP is the general partner of LP and has entered into a management contract to exercise investment discretion over LP's investments in portfolio companies. GP has entered into a contract with CORP, under which CORP will manage building maintenance and certain back office functions (e.g., maintenance of phones and computers, accounting, IT and human resources) for LP. GP is an associate of LP because it manages LP's investments. However, the management services provided by CORP do not constitute

operational management, therefore, CORP is not an associate of LP.

(e)(1)(i) *United States person*. The term *United States person* means a person the ultimate parent entity of which—

(A) Is incorporated in the United States, is organized under the laws of the United States or has its principal offices within the United States; or

(B) If a natural person, either is a citizen of the United States or resides in the United States.

(ii) *United States issuer*. The term *United States issuer* means an issuer which is incorporated in the United States, is organized under the laws of the United States or has its principal offices within the United States.

(2)(i) *Foreign person*. The term *foreign person* means a person the ultimate parent entity of which—

(A) Is not incorporated in the United States, is not organized under the laws of the United States and does not have its principal offices within the United States; or

(B) If a natural person, neither is a citizen of the United States nor resides in the United States.

(ii) *Foreign issuer*. The term *foreign issuer* means an issuer which is not incorporated in the United States, is not organized under the laws of the United States and does not have its principal offices within the United States.

(f)(1)(i) *Voting securities*. The term *voting securities* means any securities which at present or upon conversion entitle the owner or holder thereof to vote for the election of directors of the issuer, or of an entity included within the same person as the issuer.

(ii) *Non-corporate interest*. The term “non-corporate interest” means an interest in any unincorporated entity which gives the holder the right to any profits of the entity or in the event of dissolution of that entity the right to any of its assets after payment of its debts. These unincorporated entities include, but are not limited to, general partnerships, limited partnerships, limited liability partnerships, limited liability companies, cooperatives and business trusts; but these unincorporated entities do not include trusts that are irrevocable and/or in which the settlor does not retain a reversionary interest and any interest in

such a trust is not a non-corporate interest as defined by this rule.

(2) *Convertible voting security.* The term *convertible voting security* means a voting security which presently does not entitle its owner or holder to vote for directors of any entity.

(3) *Conversion.* The term *conversion* means the exercise of a right inherent in the ownership or holding of particular voting securities to exchange such securities for securities which presently entitle the owner or holder to vote for directors of the issuer or of any entity included within the same person as the issuer.

Examples: 1. The acquisition of convertible debentures which are convertible into common stock is an acquisition of "voting securities." However, § 802.31 exempts the acquisition of such securities from the requirements of the act, provided that they have no present voting rights.

2. Options and warrants are also "voting securities" for purposes of the act, because they can be exchanged for securities with present voting rights. Section 802.31 exempts the acquisition of options and warrants as well, since they do not themselves have present voting rights and hence are convertible voting securities. Notification may be required prior to exercising options and warrants, however.

3. Assume that X has issued preferred shares which presently entitle the holder to vote for directors of X, and that these shares are convertible into common shares of X. Because the preferred shares confer a present right to vote for directors of X, they are "voting securities." (See § 801.1(f)(1).) They are not "convertible voting securities," however, because the definition of that term excludes securities which confer a present right to vote for directors of any entity. (See § 801.1(f)(2).) Thus, an acquisition of these preferred shares issued by X would not be exempt as an acquisition of "convertible voting securities." (See § 802.31.) If the criteria in section 7A(a) are met, an acquisition of X's preferred shares would be subject to the reporting and waiting period requirements of the Act. Moreover, the conversion of these preferred shares into common shares of X would also be potentially reportable, since the holder would be exercising a right to exchange particular voting securities for different voting securities having a present right to vote for directors of the issuer. Because this exchange would be a "conversion," § 801.30 would apply. (See § 801.30(a)(6).)

(g)(1) *Tender offer.* The term *tender offer* means any offer to purchase voting securities which is a tender offer

within the meaning of section 14 of the Securities Exchange Act of 1934, 15 U.S.C. 78n.

(2) *Cash tender offer.* The term *cash tender offer* means a tender offer in which cash is the only consideration offered to the holders of the voting securities to be acquired.

(3) *Non-cash tender offer.* The term *non-cash tender offer* means any tender offer which is not a cash tender offer.

(h) *Notification threshold.* The term "notification threshold" means:

(1) An aggregate total amount of voting securities of the acquired person valued at greater than \$50 million (as adjusted) but less than \$100 million (as adjusted);

(2) An aggregate total amount of voting securities of the acquired person valued at \$100 million (as adjusted) or greater but less than \$500 million (as adjusted);

(3) An aggregate total amount of voting securities of the acquired person valued at \$500 million (as adjusted) or greater;

(4) Twenty-five percent of the outstanding voting securities of an issuer if valued at greater than \$1 billion (as adjusted); or

(5) Fifty percent of the outstanding voting securities of an issuer if valued at greater than \$50 million (as adjusted).

(i)(1) *Solely for the purpose of investment.* Voting securities are held or acquired "solely for the purpose of investment" if the person holding or acquiring such voting securities has no intention of participating in the formulation, determination, or direction of the basic business decisions of the issuer.

Example: If a person holds stock "solely for the purpose of investment" and thereafter decides to influence or participate in management of the issuer of that stock, the stock is no longer held "solely for the purpose of investment."

(2) *Investment assets.* The term *investment assets* means cash, deposits in financial institutions, other money market instruments, and instruments evidencing government obligations.

(j) *Engaged in manufacturing.* A person is engaged in manufacturing if it produces and derives annual sales or revenues in excess of \$1 million from

products within industries in Sectors 31–33 as coded by the North American Industry Classification System (2002 Edition) published by the Executive Office of the President, Office of Management and Budget.

(k) *United States*. The term *United States* shall include the several States, the territories, possessions, and commonwealths of the United States, and the District of Columbia.

(l) *Commerce*. The term *commerce* shall have the meaning ascribed to that term in section 1 of the Clayton Act, 15 U.S.C. 12, or section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

(m) *The act*. References to “the act” refer to Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. 94-435, 90 Stat. 1390, and as amended by Pub. L. 106-553, 114 Stat. 2762. References to “Section 7A()” refer to subsections of Section 7A of the Clayton Act. References to “this section” refer to the section of these rules in which the term appears.

(n) (*as adjusted*). The parenthetical “(as adjusted)” refers to the adjusted values published in the FEDERAL REGISTER notice titled “Revised Jurisdictional Threshold for Section 7A of the Clayton Act.” This FEDERAL REGISTER notice will be published in January of each year and the values contained therein will be effective as of the effective date published in the FEDERAL REGISTER notice and will remain effective until superseded in the next calendar year. The notice will also be available at <http://www.ftc.gov>. Such adjusted values will be calculated in accordance with Section 7A(a)(2)(A) and will be rounded up to the next highest \$100,000.

[43 FR 33537, July 31, 1978, as amended at 48 FR 34429, July 29, 1983; 52 FR 20063, May 29, 1987; 66 FR 8687, Feb. 1, 2001; 66 FR 23565, May 9, 2001; 68 FR 2430, Jan. 17, 2003; 70 FR 4990, Jan. 31, 2005; 70 FR 11510, Mar. 8, 2005; 70 FR 73372, Dec. 12, 2005; 70 FR 77313, Dec. 30, 2005; 76 FR 42479, July 19, 2011]

§ 801.2 Acquiring and acquired persons.

(a) Any person which, as a result of an acquisition, will hold voting securities or assets, either directly or indi-

rectly, or through fiduciaries, agents, or other entities acting on behalf of such person, is an acquiring person.

Example: Assume that corporations A and B, which are each ultimate parent entities of their respective “persons,” created a joint venture, corporation V, and that each holds half of V’s shares. Therefore, A and B each control V (see § 801.1(b)), and V is included within two persons, “A” and “B.” Under this section, if V is to acquire corporation X, both “A” and “B” are acquiring persons.

(b) Except as provided in paragraphs (a) and (b) of § 801.12, the person(s) within which the entity whose assets or voting securities are being acquired is included, is an acquired person.

Examples: 1. Assume that person “Q” will acquire voting securities of corporation X held by “P” and that X is not included within person “P.” Under this section, the acquired person is the person within which X is included, and is not “P.”

2. In the example to paragraph (a) of this section, if V were to be acquired by X, then both “A” and “B” would be acquired persons.

(c) For purposes of the act and these rules, a person may be an acquiring person and an acquired person with respect to separate acquisitions which comprise a single transaction.

(d)(1)(i) Mergers and consolidations are transactions subject to the act and shall be treated as acquisitions of voting securities.

(ii) In a merger, the person which, after consummation, will include the corporation in existence prior to consummation which is designated as the surviving corporation in the plan, agreement, or certificate of merger required to be filed with State authorities to effectuate the transaction shall be deemed to have made an acquisition of voting securities.

(2)(i) Any person party to a merger or consolidation is an acquiring person if, as a result of the transaction, such person will hold any assets or voting securities which it did not hold prior to the transaction.

(ii) Any person party to a merger or consolidation is an acquired person if, as a result of the transaction, the assets or voting securities of any entity included within such person will be held by any other person.

(iii) All persons party to a transaction as a result of which all parties